

commercial transactions financing agreement, real property construction or improvement financing agreement, or an obligatory disbursement agreement, see §§ 70.232, 70.233, and 70.234 of this part, respectively. For provisions relating to the protection afforded to a security interest coming into existence by virtue of disbursements, made before the 46th day after the date of tax lien filing, see § 70.146 of this part. For provisions relating to priority afforded to interest and certain other expenses with respect to a lien or security interest having priority over the lien imposed by 26 U.S.C. 6321, see § 70.147 of this part. For provisions relating to certain other interests arising after tax lien filing, see § 70.231 of this part.

(26 U.S.C. 6323)

§ 70.146 45-day period for making disbursements.

Even though a notice of a lien imposed by 26 U.S.C. 6321 is filed in accordance with § 70.149 of this part, the lien is not valid with respect to a security interest which comes into existence, after tax lien filing, by reason of disbursements made before the 46th day after the date of tax lien filing, or if earlier, before the person making the disbursements has actual notice or knowledge of the tax lien filing, but only if the security interest is:

(a) In property which is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 and which is covered by the terms of a written agreement entered into before tax lien filing, and

(b) Protected under local law against a judgment lien arising, as of the time of tax lien filing, out of an unsecured obligation.

For purposes of paragraph (a) of this section, a contract right (as defined in § 70.232(c)(2)(i) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if the contract has been made by such time. An account receivable (as defined in § 70.232(c)(2)(ii) of this part) is subject, at the time of tax lien filing, to the lien imposed by 26 U.S.C. 6321 if, and to the extent, a right to payment has been earned by performance at such time. For purposes of paragraph (b) of this section, a judgment lien is a lien

held by a judgment lien creditor as defined in § 70.143(g) of this part. For purposes of this section, it is immaterial that the written agreement provides that the disbursements are to be made at the option of the person making the disbursements. See § 70.143 (a) and (e) of this part for definitions of the terms “security interest” and “tax lien filing,” respectively. See § 70.144(a) of this part for certain circumstances under which a person is deemed to have actual notice or knowledge of a fact.

(26 U.S.C. 6323)

§ 70.147 Priority of interest and expenses.

(a) *In general.* If the lien imposed by 26 U.S.C. 6321 is not valid as against another lien or security interest, the priority of the other lien or security interest also extends to each of the following items to the extent that under local law the item has the same priority as the lien or security interest to which it relates:

(1) Any interest or carrying charges (including finance, service, and similar charges) upon the obligation secured,

(2) The reasonable charges and expenses of an indenture trustee (including, for example, the trustee under a deed of trust) or agent holding the security interest for the benefit of the holder of the security interest,

(3) The reasonable expenses, including reasonable compensation for attorneys, actually incurred in collecting or enforcing the obligation secured,

(4) The reasonable costs of insuring, preserving, or repairing the property to which the lien or security interest relates,

(5) The reasonable costs of insuring payment of the obligation secured (including amounts paid by the holder of the security interest for mortgage insurance, such as that issued by the Federal Housing Administration), and

(6) Amounts paid to satisfy any lien on the property to which the lien or security interest relates, but only if the lien so satisfied is entitled to priority over the lien imposed by 26 U.S.C. 6321.

(b) *Collection expenses.* The reasonable expenses described in paragraph (a)(3) of this section include expenditures incurred by the protected holder of the lien or security interest to establish